IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1278 OF 2005

Pandurang S. Khartode ... Petitioner

v/s

Sadashiv V. Khartode and ors. ... Respondents

Mr Rahul S. Kate for Petitioner.

Mr Uday Warunjikar for Respondent No.1 to 3 and 5 to 9.

CORAM : D.K. DESHMUKH J.

DATE : 24TH AUGUST 2005.

P.C. :-

1. Rule, returnable forthwith. Heard finally by consent of the parties.

2. The Trial Court, by order impugned, has rejected the application filed by the petitioner for amendment in the written statement. According to the plaintiffs, the Trial Court has rejected the application filed by the defendant for amendment in the written statement because the Appeal Court had remanded the suit only for trial of the additional issue and evidence was to be led only on the additional issue and therefore, there was no question of the Trial Court permitting amendment in the written statement. However, perusal of the order of the Appeal Court shows that though the Appeal Court had directed the Trial Court to frame an additional issue, permit the parties to lead evidence on that issue and decide the suit afresh, the Appeal Court had not closed the controversy between the parties on any of the issues. It is therefore obvious that the Trial Court, after remand, will have to record finding on all the issues. The Appeal Court has also said that the Trial Court shall record findings on all the issues without being influenced by the findings recorded by the

Appeal Court. In short, the order of remand is a wholesale remand and it is not a restricted remand. The Trial Court was not justified in rejecting the application filed by the defendant for amendment in the written statement. What is interesting is that in the order, the Trial Court has also observed that if the amendment in written statement is granted, the nature of the suit will be changed. By whatever amendments made by the defendant in the written statement, the nature of the suit cannot be changed, the only method of changing the nature of the suit is by introducing amendments in the plaint. It is clear that the order impugned suffers from clear non-application of mind and therefore, it is to be set aside. In the result therefore, petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (b). No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.